

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
PRIMUS TELECOMMUNICATIONS, INC. and)
LEAST COST ROUTING, INC.)
For Approval of A Pro Forma)
Transfer of Control.)
_____)

DOCKET NO. 03-0386

DECISION AND ORDER NO. 20773

Filed Jan. 20, 2004
At 2:30 o'clock P.M.

Karin Higot.
Chief Clerk of the Commission

DIV. OF CONSUMER ADVOCACY
DEPT. OF COMMERCE AND
CONSUMER AFFAIRS
STATE OF HAWAII

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DECISION AND ORDER

I.

Introduction

PRIMUS TELECOMMUNICATIONS, INC. ("Primus") and LEAST COST ROUTING, INC. ("Least Cost") (collectively, "Applicants") request commission approval for a *pro forma* transfer of control of Applicants ("Proposed Transaction").¹ Applicants make their request pursuant to Hawaii Revised Statutes ("HRS") § 269-19.

Applicants served the DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY ("Consumer Advocate") copies of the application. The Consumer Advocate, by its position statement filed on December 16, 2003, indicates that it does not object to the approval of the Proposed Transaction, described above, subject to certain qualifications.

¹Applicants' application, filed on November 3, 2003.

II.

Background

A.

Applicants and Related Entities

Primus is a Delaware corporation and maintains its principal offices in McLean, Virginia. It is a wholly-owned subsidiary of Primus Telecommunications Group, Incorporated ("PTGI"), a Delaware corporation. Primus is presently authorized to operate as a reseller of intrastate telecommunications services in the State of Hawaii ("State").²

Least Cost is a Florida corporation and also maintains its principal offices in McLean, Virginia. Least Cost is presently authorized to operate as a reseller of intrastate telecommunications services in the State.³ Least Cost is a wholly-owned subsidiary of TresCom, a Florida corporation, with the sole purpose of serving as a telecommunications holding company. TresCom, in turn, is wholly-owned by PTGI.

²Primus was granted a certificate of authority to provide intrastate telecommunications services in the State on a resold basis. Decision and Order No. 17664, filed on April 11, 2000, in Docket No. 99-0189.

³Least Cost, dba Long Distance Charges, was granted a certificate of authority to provide intrastate telecommunications services in the State on a resold basis. Decision and Order No. 15604, filed on June 2, 1997, in Docket No. 97-0165. We also note that our records, particularly Docket No. 97-0165, indicate that Least Cost is a Delaware corporation with principal offices in Santa Ana, California, as of 1998. Thus, because it appears that the corporate structure and principal offices have since changed, we conclude that Applicants should be required to provide us a written explanation of the changes, and to revise Least Cost's tariffs to reflect such changes within 30 days of the date of this decision and order.

B.

Proposed Transaction

The Proposed Transaction involves a *pro forma* transfer of control of Applicants. Specifically, PTGI plans to create an intermediate holding company, Primus Telecommunications Holding, Inc. ("Primus Holding"), which will become the direct corporate parent of Primus and TresCom. Primus and TresCom will be 100 per cent direct subsidiaries of Primus Holding, which will also be a Delaware corporation. Primus Holding will be a 100 per cent direct subsidiary of PTGI. Accordingly, control of Primus and Least Cost will indirectly be transferred to Primus Holding ("indirect transfer of control"). Applicants represent, among other things, that the indirect transfer of control: (1) will neither result in a change in name, rates, terms, or conditions of their service offerings, and (2) will be transparent to Primus' and Least Cost's customers in the State with respect to the services they receive, and therefore, will not cause customer confusion or inconvenience.

C.

Consumer Advocate's Position

The Consumer Advocate does not object to Applicants' request for approval of the Proposed Transaction pursuant to HRS § 269-7(a).⁴ The Consumer Advocate asserts, among other things, that it "recognizes the entry of many telecommunications service

⁴The Consumer Advocate states that it "believes that HRS § 269-7(a) is applicable since the proposed financial transaction is not a sale, lease, assignment, mortgage or disposition of public

providers in the Hawaii market." It further states that "[t]he market place, it is assumed, will then serve to mitigate any traditional public utility regulatory concerns regarding the proposed asset acquisition. Therefore, if there are any adverse consequences from the Proposed Transaction, consumers in Hawaii will have the option of selecting another service provider." Nonetheless, it recommends that the commission require Applicants to provide the commission and the Consumer Advocate with the following documents prior to the commission issuing its decision and order in this docket: (1) copy of Primus' loan documents, pursuant to Hawaii Administrative Rules ("HAR") §§ 6-61-101(b)(2) and 6-61-105(c)(2), as required by Decision and Order No. 19083, filed on November 29, 2001, in Docket No. 01-0050; (2) copy of Primus' revised tariffs pursuant to HAR §§ 6-80-39 and 6-80-40 as required by Decision and Order No. 17664, filed on April 11, 2000, in Docket No. 99-0189; and (3) copy of Least Cost's 2002 annual financial report as required by HAR § 6-80-91.

III.

Discussion

Based on Applicants' representations, we agree with the Consumer Advocate that although HRS § 269-19 is inapplicable to the Proposed Transaction, such a transaction falls under our purview, pursuant to HRS § 269-7(a). HRS § 269-7(a) authorizes the commission to examine the condition of each public utility, its

utility property, or a merger between two public utilities under HRS § 269-19."

financial transactions, and "all matters of every nature affecting the relations and transactions between it and the public or persons or corporations." Under HRS § 269-7(a), the commission will approve the Proposed Transaction if it is reasonable and consistent with the public interest.⁵

HRS § 269-16.9 also permits us to waive regulatory requirements applicable to telecommunications providers if we determine that competition will serve the same purpose as public interest regulation. Specifically, HAR § 6-80-135 permits us to waive the applicability of any of the provisions of HRS chapter 269 or any rule, upon a determination that a waiver is in the public interest.

Upon review of the record in this docket, particularly Applicants' representations, we find the following: (1) much of the telecommunications services currently provided by Primus and Least Cost are competitive; (2) Primus and Least Cost are non-dominant carriers in Hawaii; (3) the Proposed Transaction is consistent with the public interest; and (4) competition, in this instance, will serve the same purpose as public interest regulation.

Based on the foregoing, the commission, on its own motion, will waive the requirements of HRS § 269-7(a), to the extent applicable, pursuant to HRS § 269-16.9(e) and HAR § 6-80-135.⁶ Similarly, we also find it in the public interest to

⁵See, Decision and Order No. 19874, filed on December 13, 2002, in Docket No. 02-0345.

⁶At the same time, the commission will continue to examine a

waive the applicability of HAR § 6-61-105 in this application to the extent applicable. Accordingly, we conclude that the requirements of HAR § 6-61-105 that are not satisfied by the information provided in the application should also be waived. Nonetheless, we will adopt the Consumer Advocate's recommendations, in part,⁷ by requiring Applicants to submit the following documents within thirty (30) days of the date of this decision and order:

1. A copy of Primus' loan documents, pursuant to HAR §§ 6-61-101(b)(2) and 6-61-105(c)(2) as required by Decision and Order No. 19083, filed on November 29, 2001 in Docket No. 01-0050;
2. A copy of Primus' revised tariffs pursuant to HAR §§ 6-80-39 and 6-80-40 as required by Decision and Order No. 17664, filed on April 11, 2000, in Docket No. 99-0189; and
3. A copy of Least Cost's 2002 annual financial report as required by HAR § 6-80-91.

utility's application on a case-by-case basis to determine whether the applicable requirements of HRS § 269-7(a) or any other related provision governing utility transactions, should be waived. The commission's waiver in this decision and order shall not be construed by any utility as a basis for not filing an application involving similar transactions or circumstances.

⁷In lieu of requiring Applicants to provide the required documents prior to the issuance of this decision and order, we will allow Applicants to submit such documents within thirty (30) days of the date of this decision and order.

IV.

Orders

THE COMMISSION ORDERS:

1. The requirements of HRS § 269-7(a), to the extent applicable, are waived with respect to the Proposed Transaction described in the instant application, filed on November 3, 2003.

2. To the extent that the application does not contain all of the information required under HAR § 6-61-105, the applicability of this provision is waived.

3. Within thirty (30) days of the date of this decision and order, Applicants shall submit to the commission and the Consumer Advocate the following documents:

- a. A copy of Primus' loan documents, pursuant to HAR §§ 6-61-101(b)(2) and 6-61-105(c)(2) as required by Decision and Order No. 19083, filed on November 29, 2001, in Docket No. 01-0050;
- b. A copy of Primus' revised tariffs pursuant to HAR §§ 6-80-39 and 6-80-40 as required by Decision and Order No. 17664, filed on April 11, 2000, in Docket No. 99-0189;
- c. A copy of Least Cost's 2002 annual financial report as required by HAR § 6-80-91; and
- d. Written explanation of Least Cost's changes to its corporate structure and its principal offices since the issuance of Decision and

Order No. 15604 in 1997 and its revised tariffs reflecting such changes.

4. Applicants shall conform to all of the commission's orders set forth above. Failure to timely adhere to the commission's orders set forth above shall void this decision and order, and may result in further regulatory actions, as authorized by law.

DONE at Honolulu, Hawaii this 20th day of January, 2004.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By Carlito P. Caliboso
Carlito P. Caliboso, Chairman

By Wayne H. Kimura
Wayne H. Kimura, Commissioner

APPROVED AS TO FORM:

Kris N. Nakagawa
Kris N. Nakagawa
Commission Counsel
03-0386.ac

By Janet E. Kawelo
Janet E. Kawelo, Commissioner

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 20773 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

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Karen Higashi

DATED: January 20, 2004